

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEC 2 1998

PATRICK FISHER
Clerk

DOUGLAS LOTTIE,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

No. 98-9004
Appeal from U.S. Tax Court
(T. C. No. 17867-97)

ORDER AND JUDGMENT *

Before **PORFILIO, BARRETT,** and **KELLY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner-Appellant Douglas Lottie seeks review of a decision by the United States Tax Court dismissing as untimely his petition for redetermination of deficiency. We affirm.

On December 18, 1996, the Commissioner of Internal Revenue (Commissioner) mailed a notice of deficiency for his 1994 and 1995 tax years to petitioner at his last known address. On August 19, 1997, petitioner mailed a petition to the Tax Court seeking a redetermination of the deficiencies asserted against him for 1994 and 1995. The petition was file-stamped on August 25, 1997.

A tax court petition must be filed within ninety days of the mailing of the notice of deficiency. See 26 U.S.C. § 6213(a). A petition which is mailed to the Tax Court is deemed filed on the postmark date. See 26 U.S.C. § 7502.

Petitioner mailed his petition to the Tax Court 244 days after the notice of deficiency was mailed to him. He fails to show that he falls within any exception to the time limits detailed in 26 U.S.C. §§ 6213 and 7502. The Tax Court correctly dismissed his petition as untimely.

The judgment of the United States Tax Court is hereby AFFIRMED.

Entered for the Court

James E. Barrett
Senior Circuit Judge